THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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WRIT PETITION No.3171 OF 2004

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Dt: 05.09.2005

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Between:

The Financial Advisor and Chief Accounts Officer

(WST), South Central railway

Secunderabad and others … PETITIONERS

AND

C.Janardhan Rao, S/o.Late Adinarayana

Accounts Assistant (Under orders of removal)

Workshop Accounts Office, Lalaguda Workshop

South Central Railway, Lalaguda

Secunderabad … RESPONDENT

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THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

WRIT PETITION No.3171 OF 2004

ORDER: **(per the Hon'ble Smt.Justice T.Meena Kumari)**

With the consent of both the learned counsel, the Writ Petition itself is disposed of at the interlocutory stage.

The Writ Petition is filed by the South Central Railways represented by three officers challenging the Order dated 14.10.2003 in O.A.No.463 of 2003 and the Order of

review dated 16.01.2004 in R.A.No.82 of 2003 in O.A.No.463 of 2003, on the file of the Central Administrative Tribunal, Hyderabad.

Petitioners herein are the respondents and the respondent herein is the applicant in the said O.A.

The O.A. was filed by the respondent-employee to set aside the charge sheet dated 17.11.2000 issued to him as without jurisdiction and the consequential order dated 06.07.2002 of the second petitioner-disciplinary authority removing him from service and the Order dated 20.12.2002 of the first petitioner-appellate authority confirming the orders of removal by declaring them as illegal and arbitrary and for a consequential direction to the petitioners to reinstate him into service forthwith and to extend all the consequential benefits such as arrears of pay, allowances, seniority and promotion etc.,

It is the case of the respondent-employee that he joined the South Central Railways as Accounts Clerk on 15.06.1973. Subsequently, he was promoted as Junior Accounts Assistant and further as Accounts Assistant in the grade of Rs.5000-8000 (RSRP) in the year 1997. While he was functioning as such, he was placed under suspension on the ground that disciplinary proceedings are contemplated against him on certain allegations. Later, the said suspension was revoked and he was transferred to the Office of the third petitioner. While so, he was served with a charge sheet leveling two charges of misconduct and misbehaviour issued by the third petitioner. After holding inquiry, the second petitioner-disciplinary authority, by Order dated 06.07.2002 imposed the penalty of removal from service on the respondent-employee, which has been confirmed by the first petitioner-appellate authority by Order dated 20.12.2002. Aggrieved by the same, he filed the above mentioned O.A.

The main contention of the respondent-employee before the Tribunal was that the third petitioner who is the Senior Scale Officer and who has not completed ten years of service as a Gazetted Officer is not competent to initiate the disciplinary proceedings and to issue a charge sheet against him concerning charges, which, if proved, would entail in imposition of major penalty and on this ground, the disciplinary proceedings initiated by her and the charge memo issued by her and the consequential orders passed against him are liable to be quashed.

On the other hand, the contention of the Department before the Tribunal was that the procedure adopted in issuing the charge sheet by the third petitioner is in accordance with the relevant Rules of the Railway Servants (Discipline & Appeal) Rules, 1968 (for short **'the Rules'**); that the third petitioner was competent to initiate disciplinary proceedings and issue charge sheet relating to charges of grave nature to the respondent-employee under the provisions of Rule 8(2) of the said Rules; that the respondent-employee himself accepted the charges and that the findings recorded by the Inquiry Officer are based on the admission of the respondent-employee himself and also on the other documents which are relevant.

The Tribunal on a consideration of the rival pleadings, allowed the O.A and set aside the charge memo dated 17.11.2000 issued by the third petitioner on the ground that the said authority was not competent to initiate the disciplinary proceedings against the respondent-employee and held that the consequential Orders dated 06.07.2002 and 20.12.2002 of the second petitioner and the first petitioner respectively are illegal and violative of Rule 9(17), (19) and (20) of the said Rules and directed the Department to reinstate the respondent-employee into service forthwith and to extend all the consequential benefits such as arrears of pay, allowances, seniority, promotion etc., Challenging the same, the present Writ Petition has been preferred by the Department.

Learned counsel for the Department has submitted that the third petitioner is very much competent to issue the charge memo under the Rules particularly under Rule 8(2). The charge memo was issued by the third petitioner on 17.11.2000 to the respondent-employee and the respondent-employee submitted his written statement of defence on 08.12.2000 wherein he has accepted the charges framed against him and on completion of the enquiry, the Enquiry Officer submitted his report holding that both the charges are proved and a copy of the same was forwarded to the respondent-employee by proceedings dated 26.06.2001 directing him to make a representation. Accordingly, the respondent-employee has submitted his representation on 06.08.2001 accepting his guilt. After considering the entire material on record, the disciplinary authority imposed on the respondent-employee the penalty of removal from service on 06.07.2002 against which, a statutory appeal was also preferred and the same was dismissed on 20.12.2002.

Learned counsel for the Department contended that the respondent-employee did

not raise the issue of competency of the third petitioner to initiate the disciplinary proceedings and to issue the charge sheet either in the written statement of defence or in the representation submitted by him. Even before the appellate authority, no such issue was raised and for the first time, he has chosen to raise such issue before the Tribunal.

We have gone through the Rules relating to the initiation of disciplinary proceedings and imposition of penalties against the railway employees. Rule 6 of the Rules deals with minor and major penalties, which can be imposed on the employees. Schedule II to the Rules contains the various authorities, which can impose the different kinds of penalties. Rule 8 deals with the authorities, which can institute the proceedings. The main thrust of this case hinges on Rule 8 of the Rules, which reads:

"Authority to institute proceedings:-

1. The President or any other authority empowered by him, by general or special order, may-

    a. institute disciplinary proceedings against any Railway servant;

    b. direct a disciplinary authority to institute disciplinary proceedings against any Railway servant on whom that disciplinary authority is competent to impose, under these rules, any of the penalties specified in rule 6.

2. A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of rule 6 may, subject to the provisions of clause (c) of sub-rule (1) of rule 2 institute disciplinary proceedings against any Railway servant for the imposition of any of the penalties specified in clauses (v) to (ix) of rule 6, notwithstanding that such disciplinary authority is not competent, under these rules, to impose any of the latter penalties."

According to sub-rule (1) of Rule 8, the President or any other authority empowered by him, by general or special order, may institute disciplinary proceedings against any Railway servant or direct a disciplinary authority to institute disciplinary proceedings against any railway servant on whom that disciplinary authority is competent to impose, under the rules, **"any"** of the penalties specified in Rule 6. As

per sub-Rule (2), a disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of Rule 6 (minor penalties) may, subject to the provisions of clause (c) of sub-rule (1) of rule 2, institute disciplinary proceedings against any Railway servant for the imposition of any of the penalties specified in clauses (v) to (ix) of Rule 6 (major penalties), notwithstanding that such disciplinary authority is not competent, under these Rules, to impose any of the latter penalties.

It is, therefore, clear that Rule 8 provides two modes of instituting the disciplinary proceedings. In the first instance, the President or any other authority empowered by him can institute the disciplinary proceedings directly. Secondly, the President or any other authority empowered by him can direct a disciplinary authority, which is competent to impose **any** of the punishments specified in Rule 6, to institute the disciplinary proceedings. It is not necessary that he should be competent to impose that particular penalty. This is made very clear by sub-rule (2) of Rule 8, which is self-explanatory.

The expression “disciplinary authority” is also pivotal to this case and is defined under clause (c) of sub-Rule 1 of Rule 2. It reads:

2(1)© ‘disciplinary authority’ means:

i. in relation to the imposition of a penalty on a Railway servant, the authority competent, under these rules, to impose on him that penalty.

ii. in relation to Rule 9 and clauses (a) and (b) of sub-rule (1) of Rule 11 in the case of any Gazetted Railway servant, an authority competent to impose any of the penalties specified in Rule 6;

iii. in relation to Rule 9 in the case of any non-gazetted railway servant, an authority competent to impose any of the major penalties specified in Rule 6;

iv. in relation to clauses (a) and (b) of sub-rule (1) of Rule 11, in the case of a non-gazetted railway servant, an authority competent to impose any of the penalties specified in Rule 6.”

A reading of clause (c) of sub-rule 1 of Rule 2 makes it clear that the main thrust of competency, which is laid on the disciplinary authority is as regards his power to “impose the penalty”. There is no specific bar laid down in the said rule as regards his competency to institute the proceedings as such. Rule 8(1)(b) and sub-rule (2) of

Rule 8 make this position clear and specifically authorize an authority competent to impose lesser penalties, to institute disciplinary proceedings against employees for imposition of higher penalties. Institution of disciplinary proceedings is altogether different from imposition of penalties. Institution of disciplinary proceedings only sets the process of enquiry into motion.

Learned counsel for the respondent-employee relied on the Explanation 7(2) of the old Rules, which reads as under:

> "It may be mentioned that while framing the Railway Servants (Discipline and Appeal) Rules 1968, a deliberate decision was taken to the effect that only an authority competent to impose any of the major penalties should initiate disciplinary proceedings for imposition of such a penalty on non-gazetted staff. As such the authority for all purposes of institution of disciplinary proceedings and issue of charge memorandum for imposition of major penalty is the authority competent to impose any of the major penalties."

The explanation relied upon by the learned counsel for the respondent-employee is given by the Department by way of Railway Board's Letter No.E(D&A) 70, RG 6-36 dated 4-2-1971 and it travels beyond the scope of Rule 8, which is part of statutory rules. No such inference can be drawn from Rule 2(1) (c) or Rule 8 of the Rules; the rules are quite clear and do not admit of any ambiguity, which necessitated such an over-riding explanation. It is well settled law that any explanation to a provision should be aiding or subservient to the main provision and it cannot over-ride or destroy the main provision itself. The explanation quoted above is in direct conflict with the statutory rules and in essence, completely destroys Rule 8 and therefore, it has to give way to the statutory rules.

In the instant case, it is not the case of the respondent-employee that the third petitioner has imposed the penalty of removal from service. It is to be noted here that the third petitioner has only initiated the enquiry proceedings and the penalty has been imposed by the second petitioner, who is competent to impose such penalty. Under the Rules, the third petitioner is competent to impose some of the penalties as laid down in Rule 6 of the Rules and therefore, by virtue of clause (b) of Rule 8(1) and sub-rule (2) of Rule 8, she is fully competent to institute the disciplinary proceedings. It is also not the case of the respondent-employee that the second

petitioner is not competent to impose the penalty. Therefore, there is no illegality in the charge-memo issued by the third petitioner to the respondent-employee and it is perfectly within the legal framework. The Tribunal has lost sight of this legal position and interfered with the order of removal passed against the respondent-employee on jurisdictional aspect. The order passed by the Tribunal is thus illegal and requires to be set aside.

Accordingly, the Writ petition is allowed and the impugned order is set aside. Since the Tribunal has mainly concentrated on the jurisdictional point and has not gone into the merits, the matter is remitted back to the Central Administrative Tribunal, Hyderabad for passing appropriate orders on merits in accordance with law, within a period of three months from the date of receipt of a copy of the Order.

(T.MEENA KUMARI, J)

(P.LAKSHMANA REDDY, J)

Dt: 05.09.2005

NOTE: Furnish C.C by 12.09.2005

(b.o)

bsv/lvl